

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JENNIFER L. ELLIOTT
Claimant

VS.

BALDWIN CARE CENTER
Respondent

AND

**KANSAS HEALTHCARE ASSOC.
WORKERS COMPENSATION TRUST**
Insurance Carrier

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Docket No. 1,008,955

ORDER

Claimant appeals the June 30, 2005 Award of Administrative Law Judge Brad E. Avery. Claimant was denied permanent benefits after the Administrative Law Judge (ALJ) determined that claimant had failed to prove that she aggravated her spinal syrinx condition. The matter was placed on the Workers Compensation Board's summary docket for a determination without oral argument to the Workers Compensation Board (Board) and deemed submitted September 19, 2005.

APPEARANCES

Claimant appeared by her attorney, Chris Miller of Lawrence, Kansas. Respondent and its insurance carrier appeared by their attorney, Kip A. Kubin of Kansas City, Missouri.

RECORD AND STIPULATIONS

The Board has considered the record and adopts the stipulations contained in the Award of the ALJ.

ISSUES

Claimant raised the following issues in her Application For Review By The Workers Compensation Board:

1. Whether the ALJ erred in determining that claimant failed to prove that she suffered permanent impairment as a result of her accidental

injuries arising out of and in the course of her employment, as alleged.

2. Whether claimant is entitled to temporary total disability payments, as claimed.
3. Whether claimant is entitled to reasonable and necessary future medical care, as well as unauthorized medical care subject to the statutory maximum.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary file contained herein, the Board finds the Award of the ALJ should be affirmed.

Claimant sustained accidental injury arising out of and in the course of her employment when, on October 28, 2002, she suffered a pain in her back while bending over a patient's bed. Claimant experienced an immediate onset of pain and was referred for treatment to board certified family medicine specialist Kevin E. Hughes, M.D. Dr. Hughes first saw claimant on October 28, 2002, at which time claimant exhibited low back pain without radiculopathy into her legs. At the time of the next examination, Dr. Hughes found, on November 1, 2002, that claimant had pain in her low back with pain into the tailbone area as well. At neither of the first two examinations did claimant exhibit any mid back pain. Dr. Hughes next saw claimant on November 15, 2002, at which time claimant, for the first time, exhibited pain in her mid back, which surprised the doctor. Dr. Hughes had referred claimant for an MRI, which indicated that claimant had a syrinx on her thoracic spine. The MRI did not display disc problems. Dr. Hughes testified that a syrinx is a neurosurgical problem and that normally he would not treat such a condition. He felt that claimant's condition, the syrinx, may be related to her injury at work due to the severe pain exhibited by claimant.

Dr. Hughes referred claimant to Mary Ann Hoffmann, M.D., for an examination. Dr. Hoffmann then referred claimant to board certified neurosurgeon Phillip D. Hylton, M.D. Dr. Hylton saw claimant on November 26, 2002, at which time he also had the opportunity to review the MRI scan of the thoracic spine. In his opinion, claimant's syrinx was not related to the accident of October 28, 2002. Dr. Hylton described a syrinx as being a hydromyelia, which is a cyst in the spinal canal. He agreed the condition may be benign unless under pressure, which was the same opinion expressed by Edward J. Prostic, M.D., who later examined claimant at her attorney's request.

Dr. Hylton stated in his November 26, 2002 report¹ that he was unable to relate the hydromyelia to the mechanism described for claimant's injury. He stated that it may be associated with part of her dysesthetic syndrome, but that he did not feel the described incident at work was a suitable explanation for a traumatic origin of a hydromyelia. When claimant was informed of this, apparently she became quite angry during Dr. Hylton's examination and abruptly left his office.

Claimant was later referred at respondent's request to Michael J. Poppa, M.D., board certified in occupational medicine. Dr. Poppa examined claimant on December 4, 2003. Claimant advised Dr. Poppa that when she went to Dr. Hughes, she denied low back complaints, alleging that she had upper back complaints from the beginning. Dr. Poppa agreed the syrinx, which he determined to be syringohydromyelia and described as being preexisting, as displayed on the MRI scan was not related to claimant's work.

Claimant was ultimately referred to Edward J. Prostic, M.D., by her attorney. Dr. Prostic saw claimant on three occasions, the first being on February 26, 2003, at which time claimant described pain in her lower extremities, with tingling in her legs when sitting. The second examination was on September 23, 2003, at which time claimant continued with complaints of tingling in the legs, which she stated was caused by sitting, standing or walking. At the February 2003 examination, claimant was able to complete a full squat. However, by September 23, 2003, claimant was only able to complete one-half squat. Dr. Prostic testified that he felt claimant was a symptom magnifier.

Dr. Prostic last examined claimant on February 9, 2004, at which time claimant had pain in the mid back, with tenderness. However, Dr. Prostic testified that at the February 2003 examination, claimant denied tenderness in her mid back. Dr. Prostic was asked whether it was his opinion that the aggravation, in claimant's case, caused the spinal cord condition to be under pressure or to develop pressure. In response, Dr. Prostic stated,

Well, she now has neurologic symptoms that she did not have prior to the injury, so it is my assumption that enough has changed that there has been some effect on the hydromyelia.²

The ALJ, in reviewing the totality of the evidence, determined that claimant had most likely, in this instance, suffered a back strain which had resolved. He went on to determine that any permanent impairment claimant may have suffered as a result of the hydromyelia did not arise out of claimant's employment and was not caused by the accident of October 28, 2002. The Board, in reviewing the evidence, concurs. The medical evidence from Dr. Hughes and Dr. Prostic indicates claimant's condition initially was in her low back,

¹ Hylton Depo., Ex. 2.

² Prostic Depo., at 7.

with no mid back symptoms. It was not until later that claimant's symptoms migrated to her mid back. The Board also finds that Dr. Hylton, a board certified neurosurgeon, is convincing in his opinion that claimant's hydromyelia cannot be related to the mechanism described for her injury. The Board finds that claimant, while proving that she suffered accidental injury arising out of and in the course of her employment, has failed to prove she sustained any permanent injury or permanent aggravation from that accident. The hydromyelia, as noted by the ALJ, did not arise out of and in the course of claimant's employment and was neither caused nor aggravated by her accident of October 28, 2002.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Brad E. Avery dated June 30, 2005, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October, 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris Miller, Attorney for Claimant
Kip A. Kubin, Attorney for Respondent and its Insurance Carrier
Brad E. Avery, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director